HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. V. SEETHAPATHY

Writ Appeal No.563 of 2004

Between:

Nandyal Co-operative Sugar Factory,
Collective Farm Cane Growers Association,
M. Chintakunta (V), Gospad Mandal,
Kurnool District

... Appellant

And

Nandyal Co-operative Sugar Factory,
Rep. by its Managing Director, Kurnool
District & others.

... Respondents

::JUDGMENT::

Counsel for the appellant: Shri E. Ayyapu Reddy, Senior Advocate

Counsel for respondent Nos.1 and 4: Government Pleader for Industries and Commerce

Counsel for respondent No.3: Shri K. Gopal Chowdary

August 31, 2006

Per G.S. Singhvi, CJ

This appeal is directed against order dated 24-2-2004 passed by the learned Single Judge whereby he dismissed the writ petition filed by the appellant questioning the sale of Nandyal Cooperative Sugar Factory to Sri Rayalaseema Sugar and Energy Limited (respondent No.2).

Nandyal Sugars was registered as a cooperative society under the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the Act'). The majority of its shares (92.97%) valued at Rs.844.28 lakhs were held by the State Government. The factory set up by Nandyal Sugars in Kurnool District with an installed capacity of 1250 TCD had to be closed down during the crushing season of 1990-91 on account of non-availability of raw materials, high cost of production and fall in the sugar prices. After three years, the factory was re-started in 1994-95 under the management of IFFCO, but was again closed in 1996-97. As on 31-3-2000, the accumulated loss of Nandyal Sugars rose to Rs.1,768-00 lakhs as against paid up share capital of Rs.953.94 lakhs. In May 2001, the Registrar of Cooperative Societies, Andhra Pradesh, in exercise of the power vested in him under Section 12-A (1) of the Act, issued an advertisement for sale of the assets of Nandyal Sugars. Shri Gurijala Thimma Reddy, respondent No.2 and M/s.Sujara Pipes gave bids of Rs.999.99 lakhs, 601.25 lakhs and Rs.125 lakhs respectively. The bid of Gurijala Thimmareddy was rejected because the same was not accompanied by Earnest Money Deposit (EMD) of Rs.10 lakhs in the form of Demand Draft/Bankers Cheque. The bid of

respondent No.2 was accepted by the competent authority because it was much higher than the one given by M/s.Sujara Pipes. After paying full price, respondent No.2 took over the assets of Nandyal Sugars sometime in June 2003. Thereafter, 179 employees of Nandyal Sugars availed the benefit of Voluntary Retirement Scheme (VRS) framed by the government. Respondent No.2 restarted the factory sometime in November 2003 on trial basis. The regular production of sugar was started in June 2004.

After about three years of the issue of advertisement by the Registrar, Cooperative Societies, the appellant filed writ petition under Article 226 of the Constitution of India and prayed for quashing the sale-deed executed by Nandyal Sugars in favour of respondent No.2 and also for issue of a mandamus to the Registrar to take possession of the factory.

The learned Single Judge dismissed the writ petition by observing that the same was highly belated and the petitioner, who was not a bidder, does not have the locus to challenge the sale.

Shri E. Ayyapu Reddy, Senior Advocate argued that the reasons assigned by the learned Single Judge for refusing to entertain the writ petition are legally untenable and, therefore, the order under challenge may be set aside with a direction to the learned Single Judge to decide the issues raised in the writ petition on merits. Shri Reddy submitted that the writ petition filed by the appellant should have been admitted because another writ petition filed by Shri Gurijala Thimma Reddy (Writ Petition

No.15218 of 2001) questioning the legality of the sale of Nandyal Sugars had already been admitted and was pending hearing. Learned counsel vehemently submitted that Nandyal Sugars had been sold for pittance and the learned Single Judge committed a serious error by non-suiting the appellant without examining the merits of its contentions.

Learned Government Pleader and Shri K. Gopal Chowdary argued that the appellant's challenge to the sale of Nandyal Sugars was rightly rejected by the learned Single Judge because it had not come forward to give bid in response to advertisement issued by the Registrar.

We have considered the respective submissions. By a separate detailed order passed today, we have dismissed Writ Petition No.15218 of 2001 filed by Gurijala Thimma Reddy questioning the sale of Nandyal Sugars. In that case, Gurijala Thimma Reddy had questioned the rejection of his bid by contending that he was representing the shareholders and had submitted written authorization signed by three persons that their shares be treated as EMD. While negating his challenge, the Court referred to the conditions incorporated in the information memorandum of bid document in terms of which the bidder was required to furnish EMD of Rs. 10 lakhs in the form of Demand Draft/Bankers Cheque and held that the petitioner's failure to deposit the EMD disentitled him to participate in the bid. The Court also referred to the judgments of the Supreme Court in **Monarch Infrastructure (P) Ltd. v. Commr. , Ulhasnagar Municipal Corpn.**[1] and **W.B. State Electricity Board v. Patel**

Engineering Co.[2] and held that a person who does not fulfill the conditions specified in the bid document cannot question the decision of the competent authority to accept the bid validly given by other parties.

By adopting the reasons recorded in the order passed in Writ Petition No.15218 of 2001, we hold that the petitioner does not have the locus to challenge the decision of the competent authority to accept the bid of Rs.601.25 lakhs given by respondent No.2.

The arguments of Shri Ayyapu Reddy that the bid given by respondent No.2 was extremely low and acceptance thereof should be declared as contrary to public interest sounds attractive, but lacks merit. In paragraphs 17 and 18 of the affidavit filed by her in the writ appeal, Smt.Janaki R. Kondapi, Principal Secretary to Government, Public Enterprises Department has spelt out the criteria adopted for determining the value of Nandyal Sugars. These paragraphs read as under:

> "17. With regard to the grounds urged at para No.5 (i) and (ii) of the affidavit filed by the petitioner in W.P.No.3266 of 2004, it is submitted that the assets of the Society were valued by Government approved Professional Valuer in June, 1997. The Professional Valuer assessed the depreciated realizable value / market value of Sugar Mill at Rs.14.3 crores, in June 1997. For assessing the value of the assets, various factors were taken into consideration. For land, the Professional Valuer had taken into consideration the location, nature of title, (freehold / leasehold / restrictions), area of the land, permissible use of such land, development made, present transfer price / market value, etc. For buildings, the Valuer had taken into consideration the factors like location, year of

construction, nature of structure, present use, cost of construction, market value etc. For plant and machinery, the factors like location, source of procurement, age of the equipments, residual life, general condition, state of repairs, purchase cost, installation expenses, technical parameters, etc. were taken into consideration. The depreciated realizable value / market value is arrived from the replacement value of similar type and size of an asset, and such replacement value is suitably depreciated by the factors such as technological obsolescence, state of repairs and maintenance, normal wear and tear due to its operation in the plant and idleness of the assets.

18. It is further submitted that while evaluating the bids, the Bid Evaluation Committee had taken into consideration depreciation for four more years i.e., from June, 1997 to July, 2001 and further allowances made for inactivity. This reduced the depreciated replacement value by a minimum of 4% per annum to an estimated Rs. 11.9 crores. Realisable value of operating mills is generally taken by the valuers to be 20-30% of depreciated replacement cost. In this case, a larger discount would be required being a 20 year old mill that is closed for the past 5 years. The sugar mill operated for only 11 out of 20 years. In the years that it operated, the capacity utilization ranged from 7.4% to a maximum of 56%. According to the Bid Evaluation Committee, applying a conservative discount of 35%, the realizable value of the assets worked out to Rs. 7.7 crores. The book value is Rs. 6.53 crores. Hence, the contention of the petitioner that the value of the sugar factory on the date of sale was Rs. 50.00 crores according to the prevailing market value that the land itself costs minimum Rs. 15.00 crores and the value of the machinery and factory buildings costs more than Rs. 1559.92 lakhs is incorrect, baseless and untenable."

The appellant has not filed any reply to the affidavit of

Smt.Janaki R. Kondapi. Therefore, we do not see any reason to discredit or discard the valuation of the assets of Nandyal Sugars made by the Government and annul the sale after a gap of almost five years.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.2673 of 2004 filed by appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

G. V. SEETHAPATHY, J

August 31, 2006

svs

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[1] (2000) 5 SCC 287

[2] (2001) 2 SCC 451